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IN THE HIGH COURT OF JUDICATURE: AT JABALPUR

Cri.Appeal No.: 2679/1998 Division Bench (Criminal)

APPELLANT : Surendra Kange, S/o
(In Jail) Ghasiram, aged about
35 years, resident of
Jaambahar, Thana-
Parama, Distt.Kanker (MP)

-Versus-

RESPONDENT : State of Madhya Pradesh,
through- S.O./Parama,
District: Kanker (MP)

CONVICTION BY LOWER COURT FOR OFFENCE UNDER
SEC.302 I.P.C. AND CONVICTION FOR LIFE
IMPRISONMENT.

APPEAL UNDER SEC.374 CRIMINAL PROCEDURE CODE:

आदेश पत्रक

मामला क्रमांक

Cr. A. 2679/98

सन् 2006

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>DIVISION BENCH:</u> HON'BLE SHRI L.C. BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ CRIMINAL APPEAL NO. 2679 of 1998 Appellant : Surendra Kange Vs. Respondent : State of Madhya Pradesh Shri Anil Pandey, learned counsel for the appellant. Shri U.N.S.Deo, learned G.A. with Shri Ravindra Agrawal, learned P.L. for the respondent/State. <u>ORAL JUDGMENT</u> (30.03.2006) <u>Per L.C. Bhadoo, J</u> By this appeal under section 374 (2) of the Code of Criminal Procedure the accused/appellant has questioned the legality and correctness of the judgment of conviction and order of sentence dated 18th September 1998 passed by the Additional Sessions Judge, Kanker in Sessions Trial No. 301/97 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under section 302 of the IPC sentenced him to undergo imprisonment for life.	

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आदेश पत्रक

मामला क्रमांक Cr. A. 2679/98 सन् 200-

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	2. The case of the prosecution, in brief, is that on 10.03.1997 in village - Jambahar in between 3.00 to 4.00 p.m. Manobai (since deceased) along with her daughter PW-2 Pramila were at the residence, at that time the accused/appellant (husband of the deceased) came and asked the deceased to prepare food, on which the deceased replied that she would prepare the food after one to two hours whereupon the accused became angry and assaulted the deceased with fists and kick. Thereafter, the accused set the deceased on fire with the help of match-stick as a result of which deceased sustained extensive burn injuries and she was taken to the Primary Health Centre, Charama for treatment by the villagers. On 11.03.1997 Rojnamcha Sanah report (Ex.P-10) was lodged and on 12.03.1997 the case was registered under Cr.No. 22/97 for the offence punishable under Section 307 of the IPC. However, after three days the deceased was brought back to her residence for domestic treatment and during that period she succumbed to the burn injuries. After death of Manobai on 16th March 97 the offence against the accused/appellant was converted into Section 302 of the IPC. The accused/appellant had fled away from the scene of occurrence and he was arrested only on 28.06.1997. During the investigation the Investigating Officer prepared the Panchanam P-5 of the dead body of Manobai. The clothes of the deceased were taken into possession under P-1. The postmortem on the body of deceased Manobai was conducted	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	by Dr. K. L. Urao who prepared the postmortem report P-6 in which he opined that the death is due to burn injuries and it was homicidal in nature. After completion of the investigation charge sheet was filed against the accused/appellant in the Court of Additional Chief Judicial Magistrate, Kanker who in turn committed the case to the Sessions Judge, Jagdalpur from where learned Additional Sessions Judge, Kanker received the case on transfer for trial. 3. The prosecution in order to establish the charge against the accused/appellant examined 12 witnesses. On the other hand, statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and pleaded that he is innocent and has been falsely implicated in the crime. 4. We have heard Shri Anil Pandey, learned counsel appearing on behalf of the accused/appellant and Shri U.N.S.Deo, learned G.A. with Shri Ravindra Agrawal, learned P.L. on behalf of the State. 5. Homicidal death of deceased Manobai is not in dispute. 6. As far as involvement of the accused/appellant in committing the murder of Manobai is concerned, PW-2 Pramila – daughter of the deceased and the accused/appellant, was the eyewitness to the incident. She has stated that on the fateful day she along	

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		with her mother was at the residence, her father set her mother on fire which was witnessed by her, as at that time she was standing near the door of the house. After setting her mother on fire, her father said that he was going to bring the medicine but he did not return. She has stated that her father came in the evening in a drunken stage and asked her to prepare the meal, on which her mother replied that she would cook the meal in the evening whereupon her father started beating her mother and set her on fire. There is no reason before the Court to disbelieve the evidence of PW-2 who is none else than daughter of the accused and the deceased, aged about 13 years. Moreover, the evidence of this witness stands corroborated by the medical evidence. Apart from that PW-3 Pradeep Kumar who is a village Kotwar has stated that on the fateful day, son of Patel Phool Singh came and informed him about setting the deceased on fire by the accused, on which he along with the villagers reached the scene of occurrence. On enquiry by him the deceased informed that the accused has set her on fire and thereafter the villagers took Manobai to the hospital, Charama in a Jeep. Similar is the evidence of PW-9 Shyamji and PW-10 Phool Singh. They have also stated that the deceased made oral dying declaration before them stating that the accused has set her on fire. There is no reason before the Court to disbelieve the evidence of these witnesses before whom the deceased made oral dying declaration, therefore, involvement of the

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		accused in committing the crime in question is established as per the evidence of eyewitness and the oral dying declaration made by the deceased before PW-3, PW-9 and PW-10. 7. Learned counsel for the accused/appellant argued that when the accused asked the deceased for preparation of the meal, the deceased refused to prepare the meal which enraged the accused and in the heat of passion after setting Manobai on fire the accused left the place of occurrence, therefore the offence against the accused does not travel beyond Section 304-II of the IPC. 8. On the other hand, learned counsel for the State supported the judgment of the trial Court. 9. In order to appreciate the argument advanced by learned counsel for the accused/appellant, we have perused the evidence available on record. As per the evidence of PW-2 Pramila, daughter of the accused and the deceased, when the accused asked the deceased to prepare the meal, the deceased said that she would prepare the meal in the evening and in the first instance the accused assaulted the deceased with fists and kick and thereafter set the deceased on fire and ran away from there. The burn injuries as per the medical evidence were up to 60%, therefore, in view of the above evidence it cannot be said that the accused had not acted in a cruel manner as in the first

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 6 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
तारीख	instance the accused assaulted the deceased with fists and kick and did not stop at that and set her on fire thereafter. The deceased was helpless lady and she had not objected to the accused in any manner. The intention of the accused to cause death can safely be gathered from the fact that he after assaulting the deceased set her on fire resulting in 60% burn injuries and ran away from the place of occurrence without resorting to medical treatment to the deceased. 10. In view of the foregoing reasons, we are of the considered opinion that there is no illegality or infirmity in the impugned judgment of the trial Court and the appeal being devoid of merit deserves to be dismissed and it is hereby dismissed. Sd/- L.C. BHADOO Judge	Sd/- Dhirendra Mishra Judge

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19.4.08